

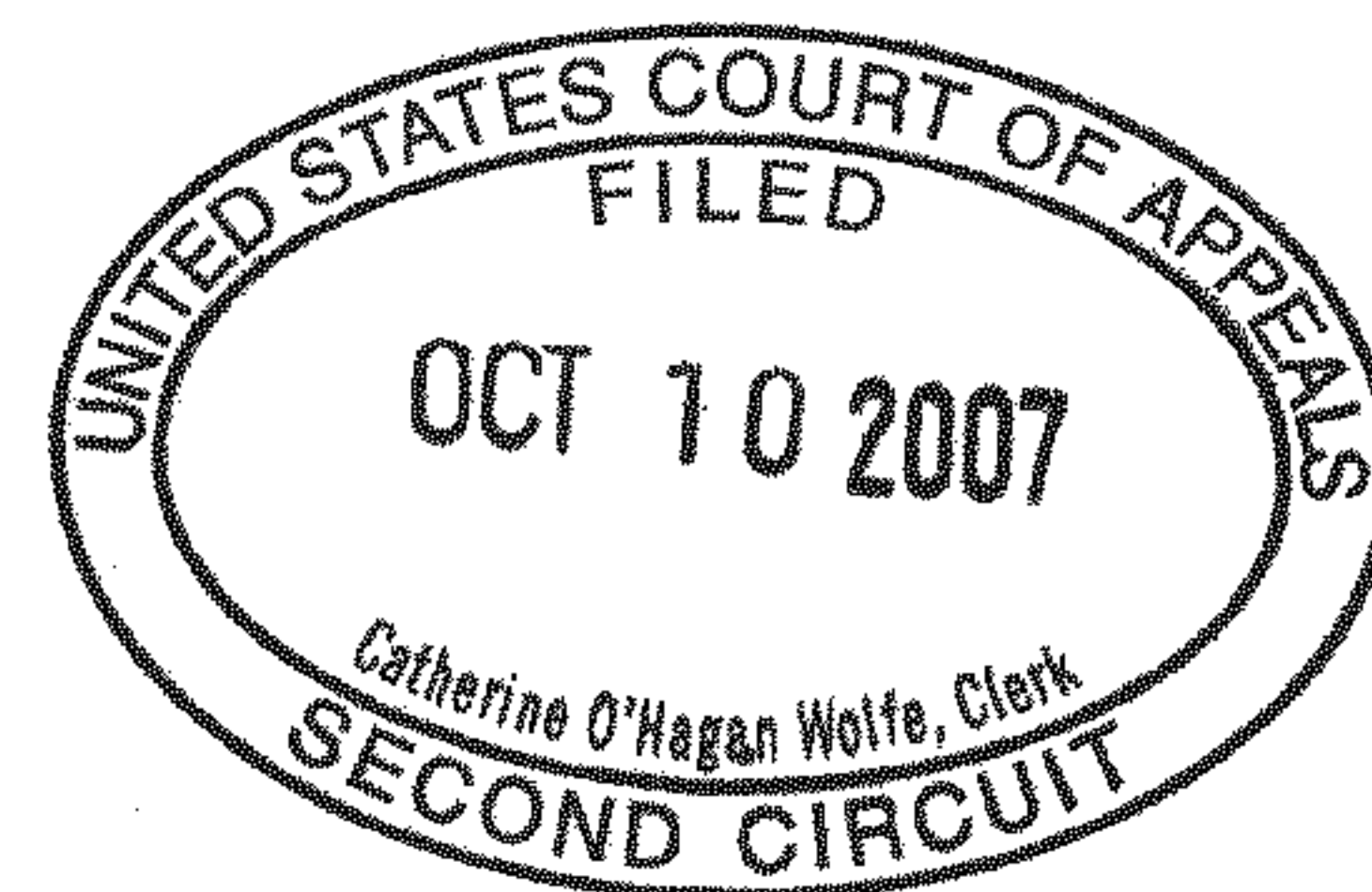
MANDATES.D.N.Y.-N.Y.C.
07-cv-5478
Scheindlin, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10th day of October, two thousand seven,

Present:

Hon. Wilfred Feinberg,
Hon. Sonia Sotomayor,
Hon. Richard C. Wesley,
Circuit Judges.



George Espinal,

Petitioner-Appellant,

v.

07-2901-pr
07-3937-op

United States of America,

Respondent-Appellee.

The two above-numbered proceedings are consolidated for purposes of this order. In the appeal docketed under 07-2901-pr, Appellant, *pro se*, moves for a certificate of appealability and to proceed *in forma pauperis*. However, this Court has determined *sua sponte* that it lacks jurisdiction over the appeal docketed under 07-2901-pr because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291. *See Murphy v. Reid*, 332 F.3d 82, 83-85 (2d Cir. 2003) (*per curiam*) (an order transferring a successive habeas petition to a court of appeals is not immediately appealable). Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED and Appellant's motions are DENIED as moot.

Construing Appellant's papers in this matter as a motion, in the matter docketed under 07-3937-op, to remand his "Memorandum of Fact and Law in Support of Motion to Vacate Conviction and Sentence, Under Audita Querela Pursuant To The All Writs Act, 28 U.S.C. § 1651(a)" back to the district court, it is ORDERED that the motion is DENIED because the district court properly construed that pleading to be a successive 28 U.S.C. § 2255 motion and properly transferred it to this

SAO-KAC

Issued as Mandate:

DEC 5 2007

Court. Therefore, it is further ORDERED that Appellant has forty-five days from the date of this order within which to file an application for leave to file, under docket number 07-3937-op, a second or successive § 2255 motion. *Liriano v. United States*, 95 F.3d 119, 123 (2d Cir. 1996). If an application is not timely filed, an order will be filed denying authorization to file the § 2255 motion in district court. *Id.*

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: Jusille Carr

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by E. Loren Martin
DEPUTY CLERK

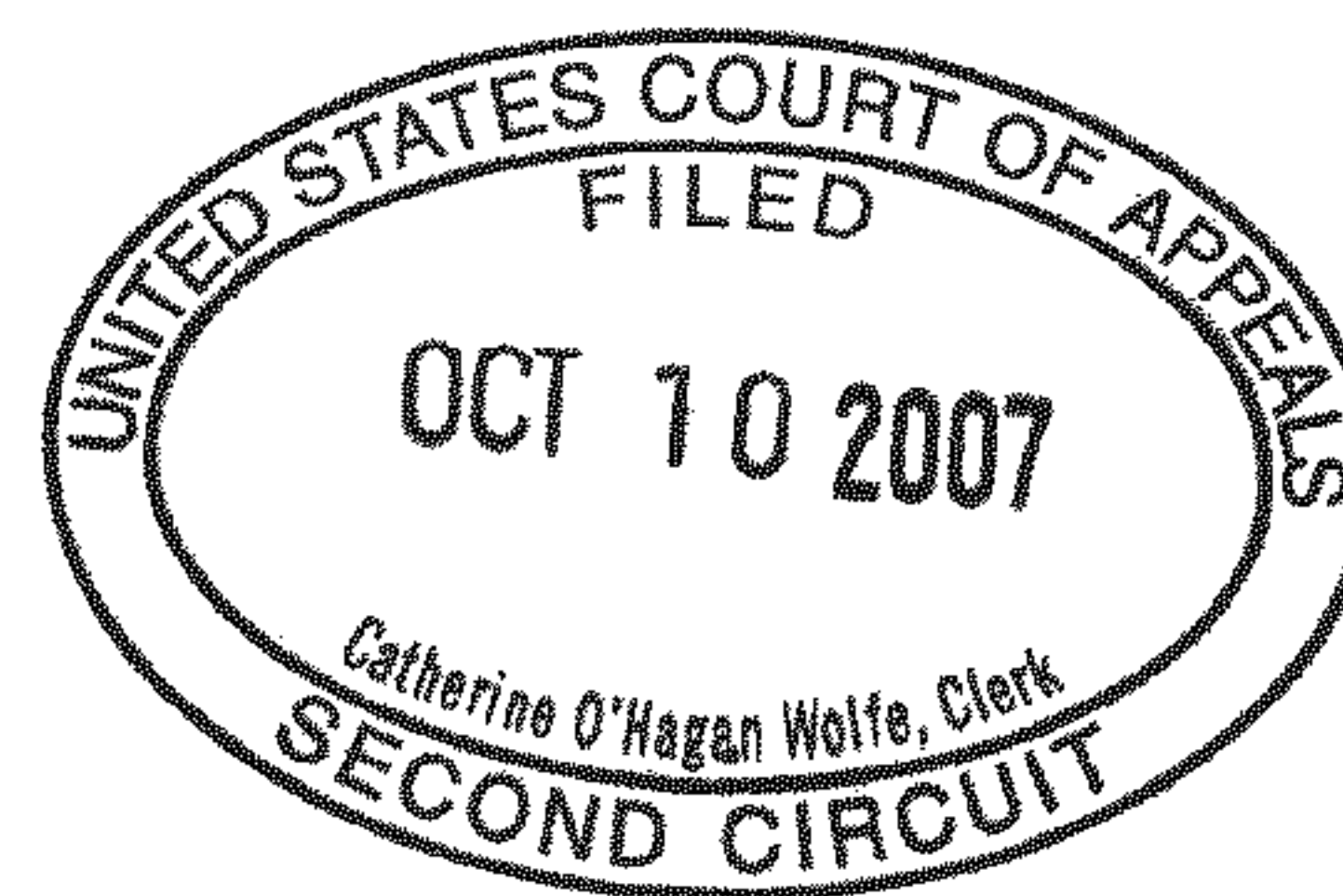
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United States of America,

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THE MANDATE CONSISTING OF
ITEMS BELOW, HAS BEEN RECEIVED
() OPINION () STATEMENT OF COSTS
(X) ORDER

RECEIVED BY: _____ DATE _____

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